

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
EDWIN LUGO, JR.,

Plaintiff,

-v.-

R. JAMES NICHOLSON,

Defendant.
-----X

ORDER

06 Civ. 13187 (LAK) (GWG)

GABRIEL W. GORENSTEIN, United States Magistrate Judge

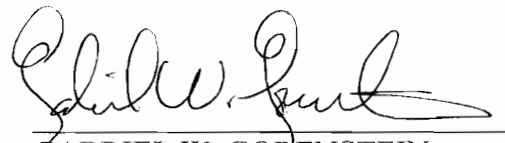
The Court believes that plaintiff's papers may be construed as alleging that the Veterans Administration committed an act of retaliation when Alfred Hong gave a negative reference to the Montrose Veterans Administration facility ("Montrose"). See Plaintiff's Memorandum of Law in Support of His Opposition to Defendant's Motion for Summary Judgment, filed Nov. 5, 2009 (Docket # 49), at 19-21. The Government's papers, however, assume that plaintiff is instead alleging that the act of retaliation at issue is Montrose's failure to rehire him.

Assuming the Court views plaintiff's papers as asserting that the act of retaliation was in fact Hong's giving of the negative reference, the Government is directed to file papers addressing whether there is currently in the record evidence of "a legitimate nondiscriminatory reason," see McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973), for Hong's giving of the negative job reference. To the extent that the Government believes that such a reason is already articulated in the record, it may cite to such evidence. In the alternative, the Government has leave to supplement the record on this point.

The Government's papers shall be submitted on or before February 25, 2010. Plaintiff may respond on or before March 4, 2010.

SO ORDERED.

Dated: February 18, 2010
New York, New York


GABRIEL W. GORENSTEIN
United States Magistrate Judge

Copies sent to:

Edwin Lugo, Jr.
7 Balint Drive Apt 420
Yonkers, NY 10710

Mara E. Trager
Assistant United States Attorney
86 Chambers Street
New York, New York 10007